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6 UNITED STATES DISTRICT COURT FOR THE
7 EASTERN DISTRICT OF WASHINGTON
8 HONORABLE MARY K. DIMKE

9 UNITED STATES OF AMERICA,

10 Plaintiff,

11 vs.

12 OSCAR CHAVEZ-GARCIA,

13 Defendant
14

No. CR-21-6028-RMP2

CR21-6030-RMP

Motion for Release

15 TO: Vanessa Waldref, U.S. Attorney for the E. Dist. of Washington
16 Stephanie Van Marter, Assistant United States Attorney
17 Oscar Chavez-Garcia, through counsel, Roger J. Peven moves the
18 Court to permit his release based upon the release plan detailed herein.

19 **I. Background and Relevant Factual Basis**

20 **CR-21-6030-RMP**

21 Mr. Oscar Chavez-Garcia was initially charged on an Indictment for a
22 violation of 8 U.S.C. §1326 alleging Being Found in the United States After
23 Removal on July 20, 2021. ECF No. 1. Mr. Chavez-Garcia was arrested on
24 July 26, 2021 and has remained in detention since that time.
25

Motion for Release and
Motion to Expedite

1 The United States moved for detention in this matter citing a risk that
2 defendant will flee and cited to safety of the community. ECF No. 7. Mr.
3 Chavez-Garcia moved to continue the detention hearing and ultimately
4 waived the detention hearing on August 11, 2021 and an Order Granting
5 Detention was entered on August 12, 2021. ECF No. 31. The Court noted
6 that if a party desires the Court to reconsider conditions of release because
7 of material and newly discovered circumstances under 18 U.S.C. §3142(f),
8 the party shall file a motion with the Court stating what circumstances are
9 new, how they are established, and the requested change in conditions of
10 release.

11 **CR-21-6028-RMP-2**

12 Mr. Chavez-Garcia was charged by Superseding Indictment in Count
13 One, an alleged violation of 21 U.S.C. §§ 841(a)(1),(b)(1)(A)(vi)(viii), 846
14 Conspiracy to Distribute 50 Grams or More of Actual (Pure)
15 Methamphetamine and 400 Grams or more of Fentanyl filed August 23,
16 2021. ECF No. 23. Mr. Chavez-Garcia appeared for initial appearance and,
17 at a later scheduled detention hearing waived a detention hearing.

18 The United States moved for detention in this matter citing that the
19 matter is a drug offense with a maximum penalty of 10 years or more; that
20 there is a flight risk, and safety of the community. ECF No. 27. The United
21 States invoked the rebuttable presumption against Mr. Chavez-Garcia
22 under 18 U.S.C. §3142(e). ECF No. 27. The Court entered an Order of
23 Detention tracking the language indicated above, permitting that a party
24 can ask for reconsideration based upon changes in circumstances. ECF
25 No. 47.

1 **II. Motion Requested**

2 Mr. Chavez-Garcia moves the Court to reconsider the Order of
3 Detention entered in both cause numbers and has identified a change in
4 circumstances that supports reconsideration. Mr. Chavez-Garcia has
5 prepared the release plan incorporated herein and requests a hearing to
6 further address release. Mr. Chavez-Garcia submits that there is a
7 combination of conditions that will reasonably assure the court of his
8 appearance for all future hearings.

9 **III. Law and Argument**

10 The framework for release is found in the Bail Reform Act of 1984.
11 Release pending trial is governed by the Bail Reform Act of 1984 which,
12 like its predecessor, the Bail Reform Act of 1966, 18 U.S.C. Secs.
13 3146-3152 (1982) (repealed October 12, 1984), mandates release of a
14 person facing trial under the least restrictive condition or combination of
15 conditions that will reasonably assure the appearance of the person as
16 required. *United States v. Motamedi*, 767 F.2d 1403, 1405 (9th Cir. 1985)
17 (further citation omitted); *and* 18 U.S.C. Sec. 3142(c)(2) (1984). The Fifth
18 and Eighth Amendments' prohibitions of deprivation of liberty without due
19 process and of excessive bail require careful review of pretrial detention
20 orders to ensure that the statutory mandate has been respected. *Id.*

21 The Bail Reform Act of 1984 states that upon appearance before a
22 judicial officer of a person charged with an offense, the judicial officer shall
23 issue an order that, pending trial, the person be: (1) released on personal
24 recognizance or upon execution of an unsecured appearance bond; (2)
25 released on a condition or combination of conditions; (3) temporarily

1 detained to permit revocation of conditional release, deportation, or
2 exclusion under subsection (d) of the section; or (4) detained under
3 subsection (e) of this section. 18 U.S.C. §3142(a) (1)-(4). The Act requires
4 that a judicial officer shall order the pretrial release of a person unless the
5 judicial officer determines that such release will not reasonably assure the
6 appearance of the person as required or will endanger the safety of any
7 other persons or the community. 18 U.S.C. §3142(b). If the Court
8 determines that personal recognizance or an unsecured bond will not
9 reasonably assure the appearance of the person as required or will
10 endanger the safety of any other person or the community, 18 U.S.C.
11 3142(c) still mandates release subject to certain specified conditions. Such
12 specified conditions include not committing further crimes, collection of
13 DNA, and subject to the least restrictive further condition, or combination of
14 conditions that such judicial officer determines will reasonably assure the
15 appearance of the person as required and the safety of any other person
16 and the community. 18 U.S.C. §3142(c)(1)(A) and (B). Temporary
17 detention is authorized for up to ten days if the judicial officer determines
18 that such person is not a citizen of the United States or lawful admitted for
19 permanent residence and such person may flee or pose a danger to the
20 community. 18 U.S.C. §3142(d)(1)(A) ,(B) and (2).

21 Section (f)(2) sets forth the procedures of the hearing and permits
22 that a hearing may be reopened, before or after a determination by the
23 judicial officer, at any time before trial if the judicial officer finds that
24 information exists that was not known to the movant at the time of the
25 hearing and that has a material bearing on the issue whether there are

1 conditions of release that will reasonably assure the appearance of such
2 person as required and the safety of any other person and the community.
3 18 U.S.C. §3142(f)(2)(B). Factors to be considered include the nature and
4 circumstances of the offense charged, the weight of the evidence against
5 the person, the history and characteristics of the person, and the nature
6 and seriousness of the danger to any person or the community that would
7 be posed by the person's release. 18 U.S.C. §3142 (g)(1)-(4).

8 If the defendant is charged with a drug offense punishable by ten
9 years or more, there is a rebuttable presumption that no condition or
10 combination of conditions will reasonably assure appearance and the
11 safety of the community. 18 U.S.C. §3142(e)(3). The presumption shifts
12 the burden of production to the defendant and may require the defendant to
13 produce some credible evidence showing reasonable assurances of
14 appearance and/or no danger to the community. Once the defendant
15 rebuts the presumption with production of evidence, the burden of proof
16 remains on the government to prove risk of flight and danger to the
17 community.

18 Mr. Chavez-Garcia is requesting release in this matter. The release
19 plan included herein would assure the Court that Mr. Chavez-Garcia is
20 neither a flight risk nor a danger to the community. Additionally, COVID-19
21 presents a true and present danger to incarcerated individuals.

22 **IV. Proffered Release Plan**

23 Mr. Chavez-Garcia is married and has three children. Mr. Chavez-
24 Garcia would return to the family home in Kennewick, Washington. The
25 family operates a landscaping business that has been verified called

1 Affordable Landscaping for the past three years. The business operations
2 were negatively impacted by Mr. Chavez-Garcia's arrest. This information
3 was previously verified by U.S. Probation and Pretrial Services. Without Mr.
4 Chavez-Garcia being available, the business is suffering significantly.

5 Mr. Chavez-Garcia additionally would be able to post a cash bond in
6 the amount of \$50,000 to ensure his return to Court. These funds are being
7 provided by a family friend who has great faith in Mr. Chavez-Garcia
8 abiding by any conditions of release set by this court. The name of this
9 individual and the source of the \$50,000.00 will be identified to the
10 government's attorney prior to the hearing in this matter in order to allow
11 adequate time for verification that the individual and the funds are
12 legitimate.

13 Mr. Chavez-Garcia is a business owner with family ties in the United
14 States including three US citizen children. Mr. Chavez-Garcia's additional
15 ability to secure his appearance with financial capital are factors that lean
16 towards overcoming the rebuttable presumption.

17 The special conditions for release are suggested as follows:

- 18 1. The posting of a \$50,000 cash bond.
- 19 2. Maintaining residence at 3829 West Kennewick Ave,
20 Kennewick Washington.
- 21 3. Electronic Home Monitoring/GPS Monitoring and restrictions
22 to home or business locations verified by the Probation Office.
- 23 4. Reporting to his Pretrial Services Officer in any manner he/
24 she requests.

25 **V. Identified Changes in Circumstances**

1 Three Pretrial Services Reports were prepared and filed under
2 CR-6030-RMP. The initial report was filed on July 27, 2021 (ECF No.8).
3 This report was submitted prior to an interview with Mr. Chavez-Garcia and
4 prior to receiving information regarding employment, living situation and
5 knowledge of the allegations forming the basis for the Superseding
6 Indictment in CR-6028. Two subsequent reports were prepared.

7 1. Residence of Mr. Chavez-Garcia and family.

8 The report is accurate when it indicates the residence of Mr. Chavez-
9 Garcia and family is located at 3829 West Kennewick Avenue in
10 Kennewick, Washington. Mr. Chavez-Garcia and his family did not reside in
11 the other two homes. While Mr. Chavez-Garcia's wife and three children
12 continue to reside in the identified house of arrest, the two other houses are
13 occupied by individuals not connected to any of the offenses charged.

14 2. Mr. Chavez-Garcia did not attempt to leave in his vehicle when the
15 agents executed the search warrant.

16 When law enforcement arrived at the location of the three houses,
17 Mr. Chavez-Garcia was in his vehicle. When law enforcement saw him in
18 the vehicle they directed him to get out. Mr. Chavez-Garcia immediately
19 exited the vehicle and, with his hands raised, peacefully and compliantly
20 walked to the custody of law enforcement. Mr. Chavez-Garcia was
21 compliant and when Mr. Chavez-Garcia asked to have his handcuffs
22 removed and allow him to go hug his two kids before being taken from the
23 property, law enforcement did so without any incident. Subsequent
24 investigation and reports are clear, Mr. Chavez-Garcia never attempted to
25 leave in his vehicle or on foot. No firearms were found in the vehicle. In a

1 non-scannable exhibit, a video taken at the scene, Mr. Chavez-Garcia can
2 clearly be seen peacefully surrendering to law enforcement will be available
3 to the court.

4 3. Birth of third son.

5 Since the writing of the Second Amended Pretrial Services Report,
6 the Chavez-Garcia's welcomed the birth of their third son in August. The
7 three children are United States citizens. Ms. Zoe Chavez is also a United
8 States Citizen with no prior arrests or convictions.

9 **VI. Conclusion**

10 For the reasons stated herein, it is requested that Mr. Chavez's
11 request for release be considered in light of the additional proposed
12 conditions of release.

13 Dated this 14th of December, 2021.

14
15 s/ Roger J. Peven
WA 6251
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20 **CERTIFICATE OF SERVICE**

21 I hereby certify that on December 14, 2021 I electronically filed the
22 foregoing with the Clerk of the Court using the CM/ECF System which will
23 send notification of such filing to the following: Stephanie Van Marter,
24 Assistant United States Attorney.

25 s/ Roger J. Peven
WA 6251

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